

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE COMMUNICATION

May 24, 2000

OPERATIONAL MEMO 111-22

TO: All Waste Management Division Supervisors

FROM: Jim Sygo, Chief, Waste Management Division

SUBJECT: Implementation of a Facility's Hazardous Waste Contingency Plan and Reporting Obligations

Requirements to maintain a hazardous waste contingency plan to address immediate or actual emergency situations and to notify the Department of Environmental Quality (DEQ) with respect to those emergencies are contained in R 299.9607 (Treatment, Storage or Disposal Facilities) and R 299.9306(1) (Generator Facilities that Accumulate Wastes on Site).

In both cases, the rules incorporate the underlying federal requirement (40 C.F.R. Parts 264 and 265, respectively) and require the facility to immediately notify the DEQ if there is a fire, explosion, or other release of hazardous waste or hazardous waste constituents that could threaten human health or the environment, or if there is knowledge that a spill has reached surface water or groundwater. The provisions of 40 C.F.R. 265.51(b) and 264.51(b) require the contingency plan to be carried out immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents that could threaten human health or the environment.

Each incident at the facility needs to be evaluated on an individual basis by the site emergency coordinator. In each case, both direct and indirect effects of a release from the facility must be evaluated in determining its potential impact. This memorandum clarifies two issues: (1) When the contingency plan must be implemented and the DEQ notified of the event even when there does not appear to be an off-site impact; (2) What is considered "immediate" as it relates to reporting these incidents to the DEQ. This memo is not intended to eliminate or address the reporting requirements to any other governmental agency or immediate responders.

1. Conditions triggering contingency plan implementation and notification requirement

Reporting obligations pertaining to emergency incidents clearly apply to any incident that could or does affect the environment or human health beyond the site at which hazardous waste is being handled. However, the protections afforded by hazardous waste regulations are not limited to impacts off site. "RCRA's mandate to protect human health and the environment is not limited to dangers occurring outside hazardous waste management facilities. The Agency is concerned about the health and safety of facility personnel." 45 Federal Register 33184 (May 19, 1980). Therefore, if an incident occurs that could threaten or does threaten the environment or human health of employees at a facility subject to contingency planning, that facility is required to immediately implement the plan and report the incident to the DEQ.

Because of the potential for health and environmental impacts, any incident that causes a release of hazardous waste or hazardous waste constituents directly to the environment requires reporting. In this context, a release to the environment includes, but is not limited to:

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- A release of hazardous waste or hazardous waste constituents into the environment through air emissions from, for example, fires, explosions, and/or volatile fumes, even though the direct release was within secondary containment in a building.
- A fire and/or explosion because of its volatile nature and ability to cause the release of contaminants to the air.
- Any direct release to the surface waters or groundwater of the state.
- Any other release of hazardous waste or hazardous waste constituents, at any location where hazardous waste is being managed, that could affect human health or the environment.

These, and any other imminent or actual emergency situation, initiate the emergency procedures in the contingency plan. The DEQ recognizes that a facility's emergency coordinator may determine that an incident does not require full implementation of the contingency plan. It may be determined, for example, that calling in outside response agencies is not necessary. Nevertheless, if any portion of the contingency plan is activated because of threats to human health or the environment, the DEQ must be notified, even though the plan is not activated in its entirety. (To assist in separating the notification obligation from implementing various components of the contingency plan, a facility could amend its plan to incorporate a decision tree requiring DEQ notification upon conducting a subset of the plan activities, even though the plan is not fully implemented.)

Finally, there may be an incident that the facility's emergency coordinator appropriately determines does not require reporting to the DEQ as discussed in this memorandum. However, if the facility has reason to believe that the public has or may become aware of the incident, the DEQ recommends that the facility contact the local district office to inform them of the incident. In this way, DEQ staff will have knowledge of the incident should the public contact them.

2. Timing of Reporting to DEQ

A facility is to immediately notify the DEQ if there is a fire, explosion, or other release of hazardous waste or hazardous waste constituents that could threaten human health or the environment, or if there is knowledge that a spill has reached surface water or ground water. "Immediately" means as soon as practicable after the occurrence giving rise to the notification requirement considering the need to initiate any emergency response actions necessary to mitigate imminent threats to human health. By way of example, notification would be practicable and should be made commensurate with the earliest of any of the following, or similar, events:

- As soon as a governmental agency's assistance is requested.
- As soon as a governmental agency responds to an incident, though not contacted by the facility.
- When the immediate danger has been abated.
- When the potential for an emergency situation has been arrested.
- When the public becomes aware of the incident.
- When the facility learns that a spill has reached surface water or groundwater.

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